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JACQUELINE E. HARTT, PH.D ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. P.O. BOX 3791 ORLANDO, FL 32802-3791			CHENG, JOE H	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/765,749  
Filing Date: January 27, 2004  
Appellant(s): KUCINSKI ET AL.

*MAILED  
MAY 16 2007  
GROUP 3700*

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Jacqueline E. Hart  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed August 14, 2006 appealing from the Office action mailed May 4, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

<b>5,672,060</b>	<b>Poor</b>	<b>9-1997</b>
<b>5,321,611</b>	<b>Clark et al</b>	<b>6-1994</b>
<b>6,093,026</b>	<b>Walker et al</b>	<b>7-2000</b>
<b>5,211,564</b>	<b>Martinez et al</b>	<b>5-1993</b>
<b>5,581,670</b>	<b>Bier et al</b>	<b>12-1996</b>

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8, 13-14, and 17-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Poor (US 5,672,060).

Regarding Claims 1 and 17, Poor discloses viewing a first visual image of a first portion of an answer page, the first portion comprising an answer space (i.e. a screen) in which an answer to an open-ended question (i.e., nonobjective assessment material) is expected to reside. See Col.5: 45-57. Poor discloses if the first portion of the answer page contains a complete answer, electronically scoring the answer (i.e. record judgments). Poor discloses if the first portion of the answer page does not encompass a complete answer, accessing and viewing a

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second visual image of a second portion of the answer page (i.e. by scrolling), the second portion comprising a sector of the answer page outside the answer space (i.e., outside the vertical display capability of the computer screen), and electronically scoring the answer. See Col.9: 6-12.

Examiner considers the answer space to correlate to the computer screen in light of Col.9: 6-12.

Regarding Claim 2, Poor discloses wherein the viewing step comprises receiving the first and second visual image through a processor (i.e., computer) onto a display device (i.e. computer monitor). See Col.9: 6-12.

Regarding Claim 3, Poor discloses entering an electronic scoring system; requesting to view an answer to score; and receiving the first visual image from a queue comprising a plurality of answer images. See Col.9: 14-24.

Regarding Claims 4 and 20-21, Poor discloses wherein the electronically scoring step comprises selecting a numerical score for the answer from a score sector (i.e. window in which judgments can be displayed); wherein the scoring protocol comprises a numerical score range for answers to the test question; and wherein the first visual image comprises a score selection element, and the formatting step comprises including the score selection element as displayed by the display protocol. See Col.9: 16-19.

Regarding Claims 5 and 22-23, Poor discloses wherein the score sector comprises a score button bar (i.e. key) displayed on a common display with the first visual image; wherein the score selection element comprises a score button bar; and wherein the first display screen further comprises a score selection element. See Col.9: 16-19.

Regarding Claims 6-8 and 24-25, Poor discloses if the first and the second visual image do not encompass a complete answer, of repeating the accessing and viewing steps until

substantially the entire answer page is viewed and wherein, if the entire answer page does not encompass a complete answer, viewing a first visual image of a second answer page to search for a complete answer. Poor discloses wherein the viewing steps comprise receiving the first and second visual image through a processor onto a display device, and the accessing step comprises electronically manipulating a scroll bar on the display device. See Co1.9: 6-12. The part of the screen in Poor wherein the user views the completion of answer by scrolling in Poor is considered by Examiner to be a second answer page.

Regarding Claims 13 and 14, Poor discloses wherein the answer comprises a calibration answer (i.e., validity item), and further comprising the steps of receiving a score and comparing the received score with a target score (e.g. 80% correct scoring) and calculating a reader effectiveness from the comparing step (i.e. 80% correct scoring). See Co1.9: 48-57.

Regarding Claim 18, Poor discloses determining a batch comprising a plurality of answers to be scored, the plurality of answers comprising a plurality of answers to be scored, the plurality of answers comprising answers to a unitary test question; fetching answer page images corresponding to the determined batch from a storage device; and holding the fetched answer page images in a cache. See Col.8: 53-Col.9: 5. It is Examiner's position that the answers in Poor are capable of being answers to a unitary test question.

Regarding Claim 19, it is Examiner's position that Poor's invention is capable of prior to the formatting and transmitting steps, of retrieving a scoring (e.g. manuals describing specific instructions for grading the assessment items in a particular project) and a display protocol for answers to the test question. See Co1.9:6-12 and Co1.10: 22-25.

Claims 9 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poor in view of Clark et al. (US 5,321,611). The rejection of the previous office action is maintained and is incorporated herein by reference.

Regarding Claim 9, Poor does not disclose expressly if a question (i.e. discrepancy) occurs during the scoring step, electronically transmitting a query (i.e. test item) to a supervisor (i.e. a third resolver). However, Clark teaches such in Col.7: 38-41. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate electronically transmitting a query to a supervisor, if a question occurs during a scoring step into the method and system of Poor, in light of the teaching of Clark, in order to resolve a discrepancy.

Regarding Claims 15 and 16, Poor does not disclose expressly the steps of calculating a time span between a first visual image viewing step and the scoring step, and comparing the time span with a target scoring time (i.e. goal) or the step of calculating a reader efficiency from the time-span comparing step. However, Clark teaches such in Col .8: 36-42, 49-52. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitations into the method and system of Clark, in light of the teaching of Poor, in order to track a resolver's performance.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poor in view of Walker et al. (US 6,093,026).

Regarding Claim 10, Poor does not disclose expressly wherein the answer comprises an answer in verbal form (i.e. audio input free form response). However, Walker teaches such in

Col.5: 26-29. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate an answer in verbal form into the method and system of Poor, in light of the teaching of Walker, in order to provide an alternative for inputting a free form response.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poor in view of Martinez (US 5,211,564).

Regarding Claim 11, Poor does not disclose expressly wherein the answer comprises a geometric diagram. However, Martinez teaches such (e.g. line) in Col.5: 21-24. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate a geometric diagram into the method and system of Poor, in light of the teaching of Martinez, in order to enable a figural response to a test item.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poor/Martinez as applied to claim 11 above, and further in view of Bier et al. (US 5,581,670).

Regarding Claim 12, Poor/Martinez does not disclose expressly the step of accessing an electronically manipulable display of a geometric tool (i.e. click-through button tool that measures geometric properties).for assessing the geometric item. However, Bier teaches such in Col.20: 22-34. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate an electronically manipulable tool into the method and system of Poor/Martinez, in light of the teaching of " Bier, in order to measure geometric properties.

**(10) Response to Argument**

Appellants argue that Poor does not teach the ability to access portions of the image that lie outside the answer space in which an answer to an open-ended question is expected to reside (regarding to Group I), or capturing and providing a visual image to a scorer that resides outside an answer sector (regarding to Group II). The Examiner disagrees with that, because the scope of the Poor is for scoring nonobjective assessment materials recorded on paper by displaying digitized images of the assessment materials on computer screens for scoring by human scorers (col. 2, lines 50-58). Poor discloses that the ability of capturing the images in the assessment area in different length which is longer than the standard size of the assessment area (i.e. the length of the assessment materials lie outside the answer space in which an answer to an open-ended question is expected to reside), and providing a visual image to a scorer that resides outside an answer sector (col. 6, lines 52-61). Hence, it is clearly that Poor teaches the feature which is alleged by the Appellant.

In addition, Appellants argue that Clark et al fails to teach the feature of “if a question occurs during the scoring step, electronically transmitting a query to a supervisor” (regarding to Group III). The examiner disagrees with that since Clark et al discloses that if the two resolvers scores do not need to agree (i.e. a question occurs during the scoring step), then the system transmits the test item to a third resolver to cure the discrepancy in the two scores and determine a score (i.e. the supervisor who has the authority to make the final decision) (col. 7, lines 38-42 and 66-68). Thus, Clark et al clearly teaches the feature which is alleged by the Appellant.

Appellants also argue that the since there is no “second visual image” taught by Poor, therefore the rejection of Poor in view of Clark is inappropriate (Regarding to Group IV). The

Examiner disagrees with that for the reason set forth above (i.e. Poor discloses the second visual image), and since the scope in both teachings are used in the field of scoring the captured image of the nonobjective assessment materials. This fulfils the requirement of the factual inquiries under *Graham* (*Graham v. John Deere*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966)). Therefore, the issue of obviousness under 35 U.S.C. § 103(a) of the claim recites a combination of elements of Poor and Clark et al is proper. See *KSR Int'l Co. v. Teleflex*, Inc. No. 04-1350 (U.S. Apr. 30, 2007).

Further, Appellants argue that “the Examiner misunderstanding the meaning of “verbal”, which here is intended to mean in the form of words, not spoken, which properly is denoted as “oral”” (regarding to Group V). Appellant further cites that “[T]he word “verbal” can mean either written or spoken verbiage”. The examiner disagrees with that since Appellant admitted the word “verbal” can be analyze as “spoken verbiage”. It is not understood as to what is the scope of the argument referring to the misunderstanding of the Examiner to interpret the word “verbal” as “spoken” response. In addition, Appellant is reading the limitation into the claim which is just not there.

Appellants argue that Martinez et al fails to “supply a human scorer with a geometric tool for making measurement of a visual image” (regarding to Group VI). The Examiner disagrees with that, because Appellant is reading the limitation into the claim which is just not there. It is noted that claim 11 recites “the answer comprises a geometric diagram” only and does not recite the limitation of supplying the geometric tool to the human scorer for making measurement of a visual image. For the record, it is the Examiner’s position that Martinez et al teaches the feature of the answer comprises a geometric diagram (i.e. the protractors could be used for answering

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the question) (col. 5, lines 21-24). Hence, it is clearly that Martinez et al teaches the feature which is alleged by the Appellant.

Furthermore, Appellants argue that Bier et al fails to teach the feature of “accessing an electronically manipulable display of geometric tool for assessing the geometric diagram” (regarding to Group VII). The examiner disagrees with that since Bier et al discloses to access an electronically manipulable display of geometric tool (i.e. click-through button tool that measures geometric properties) for assessing the geometric diagram (col. 20, lines 22-34), and the use of Bier et al is for teaching such features is old and well known in the art. Thus, the rejection of obviousness of Poor in view of Martinez et al and further in view of Bier et al is proper and stands.

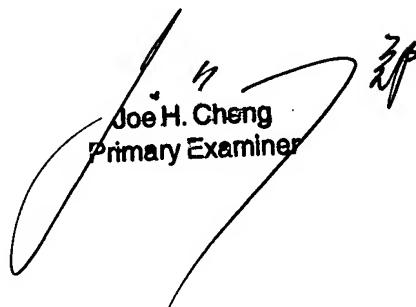
#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joe H. Cheng  
Primary Examiner

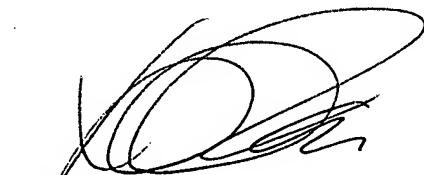


Joe H. Cheng  
Primary Examiner

Conferees:



Robert Pezzuto  
Supervisor Primary Examiner



Xuan M. Thai  
Supervisor Primary Examiner